

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 9, 1999 at 3:18 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 365, 2/2/1999; SB 305,
2/2/1999
Executive Action: SB 202, SB 218, SB 223, SJR 6,
SB 229, SB 245, SB 242

HEARING ON SB 365

Sponsor: SEN. ARNIE MOHL, SD 39, Kalispell

Proponents: **Mike Foster, Montana Contractor's Association**
 Ed Maronick, President, Helena Sand & Gravel,
 Maronick Construction
 Joel Long, JTL Group, Bozeman, Billings, Missoula

Opponents: **Jerry Driscoll, Building Trades Association**
 Darrell Holzer, Montana State AFL-CIO
 Christian Mackay, Montana Joint Heavy & Highway
 Committee

Opening Statement by Sponsor:

SEN. ARNIE MOHL, SD 39, Kalispell, brought this bill which will clarify on-site project prevailing wages. The Attorney General made a ruling which was interpreted that if a person was on a construction job and had a special item made out of state, that company was to have the same prevailing wages as the contract job. This bill declares that prevailing wages pertain to 'on-site' projects. If you have a crushing plant which is off the site, prevailing wage goes into effect for that particular area. If you are building a building and have a specialized bathroom with items made someplace else, the item is not affected by prevailing wage.

Proponents' Testimony:

Mike Foster, Montana Contractor's Association, alleged **SB 365** addresses a prevailing wage issue which surfaced last spring when Attorney General Joe Mazurek issued an opinion. **EXHIBIT (1as32a01)** The opinion states that under public works contract, employees making custom components for a construction project must be paid a prevailing wage in the area the on-site construction occurs regardless of where the materials were made. The opinion stated this prevailing wage requirement does not extend to the purchase of generic goods and supplies not designated specifically for that project. The Attorney General noted that our current statutes do not require that work involving construction services be done on a construction site itself. That silence in our laws was used as a basis for the opinion. He pointed to a statutory definition of constructions services and determined the definition is broad enough to cover fabrication of items off the construction site for use on the specific project. The problem was, there was no end as to where that jurisdiction came, and to whether or not something would be under the requirements of prevailing wage. There were some disagreements about how that would be interpreted. For example, if something were manufactured in Japan and went to that site, there was considerable agreement among those who would have to take a look at this, whether the state agency or the contractors. This

opinion would try to extend prevailing wage requirements across the borders of not only Montana, but possibly out of the country. Because of that problem, there was quite a bit of concern in the construction industry among contractors and also with the agencies which have the responsibility of enforcing prevailing wage requirements in our statutes. For 70 years the requirements for prevailing wage have been interpreted and enforced in a pretty consistent manner because it dates back to the passage of the Davis Bacon Act on a federal level, and then the state's efforts to mirror what had been done at that level as it applied to the state. In this particular area, the statutory silence is what had to be interpreted by the Attorney General. Meetings were held with Governor Racicot and Attorney General Mazurek, and the Departments of Labor and Administration. To everyone's credit, all those who had participated in that series of meetings expressed a deep willingness to find a workable solution in this matter. Eventually the Montana Department of Labor issued an interpretation of the Attorney General's opinion. That document has guided the construction industry for the past nine months. However, it is important to note the Attorney General's opinion carries the weight of law unless the courts overturn it or the legislature changes the law that's involved. The silence had to be addressed, otherwise the opinion stood as it is written. They have tried to take a fair and even-handed approach to developing this bill so that the manner in which that aspect and prevailing wage has been interpreted and enforced and administered by the agencies responsible for that over all these decades, it will continue to do that. This bill creates a status quo situation. He believes the Attorney General, Governor and Departments of Labor and Administration view this bill favorably. On page 2 there are definitions regarding project location and special circumstances. These definitions were developed to provide fair boundaries and limitations to the prevailing wage requirements. The application of those terms are shown on page 4 of the bill and there is a proposed effective date of July 1, 1999 to accommodate the beginning of a new fiscal year when contracts for public works projects will be signed.

Ed Maronick, President, Helena Sand & Gravel, Maronick

Construction, said the ruling of the Attorney General created a tremendous amount of confusion with the suppliers. They supply gravel and crush it in a stockpile as a course of their business. The portion of it that would be sold to a project which has a Davis Bacon agreement on it would have had Davis Bacon wages. They may have crushed that gravel three months previously and it only took two hours or something like that. It would have been impossible to track and the paperwork involved would be as big as the project itself.

Joe Long, JTL Group, Bozeman, Billings, Missoula stated he agrees that when you are supplying materials to a job with pre-determined wages, quite often materials come out of a commercial source and are subject to labor agreements with different standards and you may be on the job for a very short time. The time and energy to track the wages on these jobs would be prohibitive and not do the public any good.

Opponents' Testimony:

Jerry Driscoll, Montana Joint Heavy & Highway Committee, was concerned about page 2 where it talks about 'special service'. He said it is so broad that unless you build a special facility in the district prevailing wage does not apply. He understands the Attorney General's opinion was very broad and needed to be fixed, but this goes so far that if you develop a facility and manufacture things for a particular job, when it crossed the county line for a prevailing wage district where the project was located, you would not have to pay the prevailing wage. This bill basically repeals prevailing wage on most jobs unless you are physically on that location.

Darrell Holzer, Montana State AFL-CIO, said they concur with the comments of **Mr. Driscoll** in terms that the language is too broad and it needs to be re-visited and clarified for everyone involved. He wanted to tell the Committee about a reference which originated from Missoula in which **Mr. Holzer** has first-hand familiarity with what facilitated that. Part of what generated the Attorney General's opinion is there were examples of prevailing wage work going on within the State of Montana. A contractor was having some materials fabricated off-site that could have very well and very easily been done on-site and the only logical explanation is they wanted a way around the prevailing wage rate, and quite frankly, that is problematic. The same people who are working on these projects are also the ones paying for these projects with their tax dollars. We need to keep in mind there are items on any project which will have to be ordered from vendors outside the parameters, and it was never anyone's intention to try to raise this kind of an issue on specialty items.

Christian McKay, Montana Joint Heavy & Highway Committee, mentioned they concur with the comments of **Mr. Driscoll** and **Mr. Holzer**. On page 4, section 5 says that the "transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages". A truck driver involved in the paving of highway construction who drives his or her truck from the hot plant to the road project every day, trip after trip

until the project is completed, is not subject to prevailing wage. This language seems to mirror a court decision in Texas which stated this. That decision is now under appeal in the Federal Circuit Court and may be overturned. He urged a "do not pass".

{Tape : 1; Side : A; Approx. Time Counter : 17 - 33}

Questions from Committee Members and Responses:

SEN. ALVIN ELLIS said he did not believe it is **Jerry Driscoll's** intent to put a minimum wage on the cement manufacturer who sells to a highway project in different parts of Montana. He asked if **Mr. Driscoll** had amendments to take care of the problem?

Mr. Driscoll said he is working on amendments but does not have them ready. He has spoken to the proponents of the bill and quickly wrote, "special circumstances means all specialty work performed at the facility, not as a normal business practice for a specific public works project". If they didn't normally do it and began pre-fabricating something anywhere, they would have to pay prevailing wage rate.

SEN. SUE BARTLETT asked **Mike Foster** in reference to **Mr. McKay's** comments about the transportation if it was his intention to preclude a driver who isn't really involved in the project, like moving the material from the hot plant to the site of highway overlay. Would that truck driver be covered?

Mr. Foster responded their goal was to create language which would carry forth the status quo. With this language the truck driver would be treated the same as he was the past 50 years.

SEN. BARTLETT asked **SEN. MOHL** the same question.

SEN. MOHL responded the way it works now. If you had a town plant that sells to anyone, you would not have to pay according to the Davis Bacon Act. For the truck driver who hauls to the site, he would not have to be paid according to this act, but if he gets out of his vehicle and does anything on the project, then he falls under the Davis Bacon Act. If that gravel pit was designated only and is not a commercial pit, then they get paid the prevailing wage.

SEN. BARTLETT verbalized that is not what this language says.

John Andrew, Department of Labor, said he would agree with **SEN. MOHL'S** explanation of how the law is currently enforced and he believes that is what this language is saying as well.

SEN. BARTLETT still wasn't sure the language said that.

SEN. ELLIS asked **Mr. Andrew** if it makes any difference who that truck driver works for. In other words, if he is employed by the contractor, he clearly is covered by the Davis Bacon Act, is he not?

Mr. Andrew responded he believes that is correct.

SEN. ELLIS asked if he is under contract or freelances normally but is under contract, how would that be handled?

Mr. Andrew related what they would look at is whether that person is supplying material to the project or if they are working specifically on that project. If that individual were working on a project, for instance the batch plant **SEN. MOHL** described, they are covered by the law. On the other hand, if they were coming from a commercial pit which was established for a reason other than that project, then he would say 'no'.

SEN. ELLIS said with regard to these questions, he assumes in every case the batch plant or pit is commercial.

Mr. Andrew answered that is correct. The distinction is the supplier of a commercial product versus something which is being done specifically for that project.

SEN. ELLIS inquired how it works if the truck driver is freelancing and he hauls wherever he can use his truck.

Mr. Andrew responded what they would look at is whether the individual who is hauling specifically on that project is receiving sufficient pay to equal the prevailing wage rates.

Closing by Sponsor:

SEN. MOHL contended with this bill. They are trying to eliminate the wide range of a problem with the opinion of the law. You could set up a shop and pre-cast or something, and you probably can, but can you do it more efficiently. If you had a pre-cast company who was set up downtown and makes a variety of materials, why would you want to set up and try to pre-cast on the project? It is not as efficient. So when you did the project you probably contacted the pre-cast company and had it completed. The pre-cast company would not fall under prevailing wage of the project because they are not only working for this project, but they are working for whoever else needs something. They are trying to confine this to an area to make sure people are getting the wages

they are suppose to be getting. He believes this bill is well-written and will solve a lot of problems.

{Tape : 1; Side : B; Approx. Time Counter : 33 - 50}

HEARING ON SB 305

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Mike Foster, Montana Contractor's Association
Ed Maronick, President, Helena Sand & Gravel,
Maronick Construction
Paul Thompson, Gilman Construction
Mitch Leslie, President, Quality Concrete,
Billings
Joel Long, JTL Group, Bozeman, Billings, Missoula

Opponents: Jerry Driscoll, Building Trades Association
Christian Mackay, Montana Joint Heavy & Highway
Committee
Keith Allen, International Brotherhood of
Electrical Workers, #233 (IBEW)

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, explained this legislation addresses an important national issue within the construction industry. President Clinton issued a memorandum in 1997 two years ago, encouraging public owner Project Labor Agreements (PLA). There have been a growing number of these agreements which are not good for Montana. You may think that union contractors like these and non-union contractors don't. That is not the case. Neither like these. PLAs were created by the public sector making agreements with a union. An employer is typically not involved in this agreement. There may be some benefits to these agreements, such as a no-strike benefit, but they cut out the employers and there may be some detriments there. For example, PLAs are anti-competitive and create some problems for the union and open shop contractors. The open shop contractors might face the inability to use their own employees. There could be a disregard for the competitive bidding procedures with these PLAs. The employer may have to take union benefit plans and the employees may never receive those benefits due to time vesting in qualifications and requirements. There is legitimate trouble with these. There are problems with the union contractors in that there could be the removal of the contract for the collective bargaining process. The PLAs also could increase cost of public construction projects and excluding

contractors from bidding and therefore, the costs go up. They could simply discourage contractors from becoming involved and bidding on certain contracts. This legislation is meant to be preventative so we don't have these situations agree. There is a lot of protection within our construction industry for union and non-union employees. To go beyond and enact these PLAs would be detrimental and cost more. We have a lot of school districts which need to build schools around the state and we don't need these sort of agreements getting in the way of the classrooms. This is legislation that will pre-empt a problem from becoming prevalent in Montana, save money, and is good public policy.

Proponents' Testimony:

Mike Foster, Montana Contractor's Association, thanked **SEN. THOMAS** for presenting this bill. When they became aware the current administration at the federal level was pushing for project labor agreements, it became a concern for the construction industry because it is a highly competitive area. Someone puts out a bid and they live and die by it and it is tough. When the government steps in and says they are going to dictate certain things, to a degree some of that has to happen. But when you deal with something as important as labor negotiations, our industry believes it should be left where it has been. That is between the employer and the employees. When government steps in, it creates all sorts of problems. One of the other things beyond what **SEN. THOMAS** said is if you have a political appointee who is assigned to take care of a project labor agreement and you do the negotiations, and insert politics into that process of labor negotiations, you are really upsetting that delicate balance that exists. Whatever political philosophy is integrated, the project can go either way and it can be to the detriment of both the employees and the employers as they work hard to have agreements which are mutually beneficial and allow that business to continue to be able to compete, as well as the employees to have a good job. The construction industry is proud of the fact that they provide high-paying jobs. That balance has worked and they are concerned that if the government steps in and starts dictating what the terms of the agreements will be. It will have a very devastating effect on the industry and the employee-employer relationship. The **Montana Contractor's Association** represents both union and open shop contractors. Both are able to compete and do well, at least continue to survive in the atmosphere we have. In Montana that is tough. This is not just to the advantage of the union contractors. It is a bad situation for both union and non-union employers. He asked the Committee to support this bill.

Ed Maronick, President, Helena Sand & Gravel, Maronick

Construction, explained this bill is needed for several reasons. If a non-union contractor wanted to bid or work on a project which had a project labor agreement in force, they would be forced to sign a union agreement. Just bear in mind, the employees of that contractor might not want it. They many have a labor agreement enforced on them which they do not want. Also, the unions would not agree with a system they are paying into the current non-union pension system. They would have to pay into the union's pension system and the odds are very good with the union vesting rules that the employees would never see this money. This would intent to reduce competition. A lot of contractors would simply not bid on these projects for the fear of union involvement. That would intend to inflate prices and cause bad things to happen. This would also put a government official negotiating contracts which should be between employers and their employees. He doesn't believe any government official has that expertise. Union contractors agree with this and have asked **Mr. Maronick** to voice that.

Paul Thompson, Gilman Construction, announced they are a union contractor based in Butte and have been a union contractor for over 40 years. He urged support of this bill. They see problems with project labor agreements. First of all, on public project bid, either state, local government or school district, the wages are currently set by the Davis Bacon Law. The only thing a union contractor has left to negotiate is contract language and work rules. Many of the items in their contracts are things negotiated over the past 40 years and they fought hard for certain things. A project labor agreement would take those away from them and basically leave the employer with no representation in the labor agreement. Project labor agreements are negotiated between the owner and labor groups usually before the project goes out for bid. The owner's would vary from state agencies to school districts to local government. They believe all those agencies may not have the experience nor the expertise. They may not know the needs of the contractors and they could easily end up agreeing to language which would slow the work or increase the cost of the project. A few private projects which had project labor agreements have been negotiated by a large international consulting firm which had a lot of experience in that area and there were still many problems with that project labor agreement. They spent their time trying to negotiate things such as whether the operator of a piece of equipment should put fuel in his equipment at the end of a shift or if someone else should be brought in just to do that. The project labor agreements they've been involved with usually include some provisions of the union contract, but they also use many restrictive things unseen before. Almost without fail those things tend to either slow

production and efficiency on the project or increase the cost. He urged the Committee to support **SB 305**.

Mitch Leslie, President, Quality Concrete, Billings, also asked the Committee to support this bill. His company is a small non-union contractor and they bid on quite a few projects, from government projects to private patios. They are a member of a health care trust. They have to pay into it for every hour of work. If they entered into a job which had a project labor agreement that required them to pay into a Teamster's trust, they would have to pay twice; once into hours as required, and once on the job. This would give them a disadvantage bidding which means they could loose jobs.

{Tape : 1; Side : B; Approx. Time Counter : 42 - 52}

Joel Long, JTL Group, Bozeman, said they are a union contractor and would be subject to conflicting rules and regulations for health care and retirement. They support this bill.

Opponents' Testimony:

Jerry Driscoll, Montana Building Trades Council, stated there has never been a project labor agreement concerning public works projects in this state. Colstrip was built because the company did not want to work under ten or twelve labor agreements, they wanted to work under one. The owners started the negotiations. If union pension funds build things, they demand to be completed with union pension funds and there are contractors who continually want to challenge that. He said this is a ridiculous law.

Christian McKay, Montana Joint Heavy & Highway Committee, handed out **EXHIBIT(1as32a02)**. This exhibit includes an executive order signed by the President, a memo from the U.S. General Services Administration, and the final one is a memo from the Secretary of Transportation. The points highlighted stress several things.

- 1) The project labor agreements are voluntary and are a tool the public entity could use as a way to contain costs to meet budgets and deadlines.
- _____2) All project labor agreements contain guarantees against strike, walk-outs, and similar work disruptions.

3) The document from the Secretary of Transportation states that these agreements have been used successfully in a number of major transportation projects and have been instrumental in assuring the projects were completed on time and within budget.

Mr. McKay remarked passing this bill would take a vital tool out of the hands of state and local government, cities, counties and school districts, which may help them contain costs, meet their budgets, and meet their deadlines. He urged the Committee to kill this bill.

Keith Allen, International Brotherhood of Electrical Workers, #233, (IBEW), conveyed the last couple of years they worked under a project labor agreement in Butte in the silicone plant. They had 500 electricians there, some were from out of state and some were from Canada. At the same time there were approximately 600 to 700 plumbers and pipefitters on that job. The only way you can get plumbers and electricians on a job that size to get along is through a project labor agreement. It spells out the type of work for each group of workers, plumbers, electricians, steelworkers, carpet layers, etc. This agreement is good, it reduces cost and keeps the job on schedule.

Questions from Committee Members and Responses:

CHAIRMAN KEATING stated this bill repeals the requirement for a PLA and as **SEN. THOMAS** if it prohibits parties from entering into a PLA?

SEN. THOMAS responded the political subdivision may not require the contractor or subcontractor to enter into such agreement. That does prohibit the PLA.

Closing by Sponsor:

SEN. THOMAS closed by stating we do not need this problem. Some of us who serve in the Legislature do not want this sort of thing and we certainly don't want documentation from the White House to dictate what we do in Montana. We want a free and open market in Montana where good things happen. We do not want to disrupt the balance between the employer and the employees who work there. We don't want artificial agreements that tell everyone how to get along on the project. If they can't get along, maybe they should be fired. He thinks 99% of labor as well as non-labor union

members work hard, do their job and don't need anyone telling them what to do to get along through some agreement. The contractors made an excellent point regarding a working agreement with the employees as to who does what, who checks this, who puts the fuel in, etc. We don't need this new contract coming in that figures all this out before the project and destruct the work force and disrupt the way you work with your fellow employee with this new contract that supersedes all this. He recommended this legislation.

{Tape : 1; Side : B; Approx. Time Counter : 52 - 80}

EXECUTIVE ACTION ON SB 202

Motion: SEN. BARTLETT moved that SB 202 DO PASS.

Motion: SEN. BARTLETT moved that THE AMENDMENT BE ADOPTED.
EXHIBIT(las32a03)

SEN. BARTLETT explained the amendment.

Vote: Motion that THE AMENDMENT BE ADOPTED carried unanimously.

Discussion:

SEN. BARTLETT reminded the Committee that for the construction industry employers would pay overtime for any hours over eight hours in a single day. If the employee worked a 5-day work schedule or if the employee worked four days, it would be overtime on any hours over ten in a single work day.

CHAIRMAN KEATING asked if that is all the bill does.

SEN. BARTLETT responded it is.

CHAIRMAN KEATING inquired if this is already in the law.

SEN. BARTLETT responded "no, it is not". It is overtime after 40 hours in a work week. This would actually take us back to conditions which were in place prior to 1985. The issue is one of safety and fairness.

CHAIRMAN KEATING then asked if the definition of the construction industry was not at odds with the same definition elsewhere. In other words, is this a new definition which applies elsewhere in the codes.

Eddy McClure answered the definition without the amendment comes from several other places in the code.

SEN. BARTLETT alleged it would just apply to the application of overtime provisions.

CHAIRMAN KEATING remarked there are workplaces now on a 10-hour per day, 4-day per week work hour. He inquired if they are not now subject to overtime after 40 hours.

SEN. BARTLETT responded they are.

CHAIRMAN KEATING asked what this bill does which is different from that.

SEN. BARTLETT conveyed it says they must pay that overtime after ten hours in a day. If they work 12 hours in the first day, they would receive two hours of overtime.

SEN. WALTER MCNUTT explained he has trouble with this bill because his business bases their work week on 40 hours. Some days his employees might work 10 hours and then there are occasions they work only four hours. He does not understand why this bill is needed. It appears to him we have been on a course of 40-hour work weeks. The counties are based on that and we have always been geared to a 40-hour work week and overtime beyond that. He said he can't support the bill, it is contrary to what he has done over the years.

SEN. BOB KEENAN felt the bill was confusing, maybe not for the contractors or union people, but the small 'mom and pops' across the State of Montana may not understand the impact of this bill and how it affects them in running their small business and managing their employees. He sees no need to mess around with the overtime laws in the State of Montana at this time.

Substitute Motion: **SEN. KEENAN** made a substitute motion that **SB202 BE TABLED.**

Discussion:

SEN. BARTLETT reminded this bill covers only the construction industry, not every small 'mom and pop' shop. Overtime was actually paid after eight hours in the day for years until about 1985. That was the standard for the industry.

Vote: Motion that **SB 202 BE TABLED** carried 6-3 with **SEN. BARTLETT, SEN. COCCHIARELLA, AND SEN. WILSON** voting no.

EXECUTIVE ACTION ON SB 218

CHAIRMAN KEATING commented that it occurred to him that the Fire Marshals during the testimony on this bill were really concerned about people doing their own wiring in their home, and then the home burning down. The wiring was not permitted not inspected. If this bill dies, that is already available to them under the law. If the bill was amended, we could broaden the language to state "work done on a person's own residential rental property", which would restrict it to just dwellings and a business owner could not re-wire their own business property but a homeowner or landlord could do their own wiring on residential property after obtaining a permit and submitting to the required inspections. If these people want to save time and money and want to re-wire their property for rent and dwellings, that would make this possible. That might cut down some of the fires the Fire Marshals were talking about residential property. He asked for the Committee's consensus regarding this.

SEN. WILSON related he would like to talk to a Fire Marshal but he would not support this bill as now written.

SEN. THOMAS did not feel the Committee should send the bill out as is. He said if there were amendments added they could take another look at the bill later.

Motion/Vote: **SEN. THOMAS** moved that **SB 218 BE TABLED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 223

SEN. THOMAS professed he did not like this piece of legislation and would like to dispose of it quickly.

SEN. BARTLETT commented she believed this raises an issue and people do not want to use this as a vehicle in which to address this issue. However, she does believe there is a legitimate issue of groups who are insured have enough characteristics they share to have the group make sense for insurance purposes. **SEN. ROUSH'S** real concern is a safety issue and how to put together an effective workplace safety program for a group which is diverse and has been insured as trade groups.

SEN. ELLIS mentioned he pointed out in during the hearing some groups are wide varieties of a certain business and he believes that an organization should be the only vehicle. Obviously, the State Fund can't negotiate with every individual to get them active in a safety program. Organizations such as the National Federation of Business and the Stock Grower's Association are the types of vehicle which can appropriately handle the safety

programs. The actuary reports will show results and each business is going to have to either show safety or bear the burden they are putting on the system. He is opposed to this legislation.

SEN. COCCHIARELLA remarked on the Governor's Committee someone from Texas spoke about heterogeneous and homogeneous groups. His conclusion is that generally heterogeneous groups do not tend to succeed because they do not have the same interest nor focus for safety.

SEN. MCNUTT expressed they have a Workers' Compensation policy in his business that is represented by an association. In that association there are restaurant owners, tire dealers, agriculture equipment dealers and hardware dealers. Beyond that, he also carries a liability policy from another company, which has provided them with safety information, safety films, etc. which we are not getting from Workers' Compensation. He would hate to see his group broken up because they are able to include those businesses. He cannot support this bill.

SEN. THOMAS asserted he felt that **SEN. BARTLETT** is correct in stating if there is a problem, this is not the way to fix it.

Motion/Vote: **SEN. THOMAS** moved that **SB 223 BE TABLED. Motion carried unanimously.**

EXECUTIVE ACTION ON SJR 6

Motion: **SEN. COCCHIARELLA** moved that **SJR 6 DO PASS.**

Discussion: **CHAIRMAN KEATING** stated he had made a couple of comments on this bill. One question was if there is anything which prohibits collective bargaining in our law. The answer to that is 'no', there is nothing which prohibits collective bargaining. **{Tape 2; Side : A; Approx. Time Counter : 80 - 112}** Then, the testimony went almost entirely to complaining about the National Labor Relations Board, that they don't act. Yet no copy of this resolution is being sent to anybody at the federal level that could do something about the National Labor Relations Board. The employers in this state in a lot of cases don't want their employees to join a bargaining unit because of our closed shop law. Once an establishment wants a shop that is unionized, it is a closed shop and employers are definitely afraid of that. They are not against collective bargaining but a closed shop frightens most of them.

SEN. MCNUTT added he has been at his business for 30 years and has tried very hard to provide his group hospitalization insurance, a retirement plan and all the things that his employees need. As a businessman in the State of Montana this is somewhat a set-back in the efforts he has spent for 30 years. He believes there are a lot of employers in the state who would be offended by the language in this bill.

Substitute Motion/Vote: **SEN. MCNUTT** made a substitute motion that **SJR 6 BE TABLED. Substitute motion carried with SEN. BARTLETT, SEN. COCCHIARELLA and SEN. WILSON voting no.**

EXECUTIVE ACTION ON SB 229

Motion: **SEN. THOMAS** moved that **SB 229 DO PASS.**

Discussion: **SEN. THOMAS** explained this legislation exempts the school district from using prevailing wage for public contracts such as school lunch programs and transportation. It does not affect any construction work. The amendment takes out any question of this bill affecting construction work relating to prevailing wage. **EXHIBIT (las32a04)**

Motion/Vote: **SEN. THOMAS** moved that **THE AMENDMENT BE ADOPTED. Motion failed unanimously.**

SEN. BARTLETT mentioned this takes schools out of coverage of paying prevailing wage on non-construction services. As we all know, there was a working committee from 1995 to 1997 which put together HB 407 and came to the legislature with that bill to clarify and reduce the number of services which had to be covered by prevailing wage. The School Board's Association participated in that working committee and testified in support of HB 407 which put these three words into law. The people they used to contract with are part of the survey for prevailing wage purposes. When Mr. Karst either didn't get the survey or turn it in, he testified he went to the Department of Labor & Industry to research and analyze and had his rates included. Then the rate dropped from \$11 and some cents per hour to \$7.90. She said maybe we should investigate Mr. Karst for minimum wage violations. Really, the school districts are saying they didn't mean 'me'. **SEN. BARTLETT** attested this is not a good lesson for our children. They had ample opportunity to protest. In past sessions when there was something they didn't like, they came in with legislation which affects the whole state.

SEN. THOMAS conveyed there has been some confusion about the working group from the prior session legislation. It is his

understanding the School Board's Association does not agree that they were involved in that working group.

SEN. BARTLETT asked if they are denying that they had the opportunity to be involved?

SEN. THOMAS said he couldn't answer that question.

Substitute Motion: **SEN. WILSON** made a substitute motion that **SB 229 BE TABLED. Motion failed with SEN. BARTLETT and SEN. WILSON voting 'yes'.**

Vote: Motion that **SB 229 DO PASS AS AMENDED** carried 7-2.

EXECUTIVE ACTION ON SB 245

Motion: **SEN. KEENAN** moved that **SB 245 AND THE AMENDMENT DO PASS. EXHIBIT(las32a05)**

Discussion: **SEN. COCCHIARELLA** voiced she felt the amendment is good but the bill scares her a lot. She has seen people who work in the home health provider care profession who are quite often uneducated, but sometimes not. Sometimes it is the only job they can get and in some cases she foresees these people being taken advantage of. She doesn't object to this concept but she doesn't want to see people who are already underpaid being taken advantage of by calling them a home companion.

Vote: Motion that **THE AMENDMENT BE ADOPTED** carried unanimously.

Discussion: **SEN. BARTLETT** asked **Eddye McClure** if she had a copy of the federal definition. **EXHIBIT(las32a06)**

Vote: Motion that **SB 245 DO PASS AS AMENDED** carried unanimously.

EXECUTIVE ACTION ON SB 242

Discussion: **Eddye McClure** handed out amendments which the sponsor of the bill, **SEN. KEN MILLER** requested. **EXHIBIT(las32a07)**

Motion: **SEN. KEENAN** moved that **SB 242 DO PASS.**

Motion: **SEN. KEENAN** moved that **THE AMENDMENTS BE ADOPTED.**

Vote: Motion that **THE AMENDMENTS BE ADOPTED** carried 6-3.

Vote: Motion **SB 242** carried 5-4.

ADJOURNMENT

Adjournment: 5:00 P.M.

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

February 9, 1999

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SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (1as32aad)